

AMENDED IN ASSEMBLY JUNE 16, 2003

AMENDED IN SENATE APRIL 29, 2003

AMENDED IN SENATE MARCH 27, 2003

**SENATE BILL**

**No. 418**

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**Introduced by Senator Sher**

February 20, 2003

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An act to repeal and add Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, relating to fish and wildlife, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 418, as amended, Sher. Fish and wildlife: streambed alteration agreements.

(1) Existing law requires a governmental agency or public utility that proposes a project that would divert, obstruct, or change the natural flow of, or result in the disposal of debris in, a river, stream, or lake designated by the Department of Fish and Game, to submit prescribed plans and other information to the department, and to follow prescribed procedures. Under existing law, a violation of the Fish and Game Code is a crime.

This bill would revise that proposal process by doing all of the following:

- (a) Define various terms.
- (b) Clarify the notification and determination procedure, including prescribing deadlines throughout the process and making it uniform as to all applicants.
- (c) Modify the existing arbitration process, including requiring that one arbitration panel member have relevant scientific expertise.

(d) ~~Remove the cap on the amount~~ *Authorize the director of the department to establish a graduated schedule of fees that may be charged for administering and enforcing the process, and would limit the amount of the fee charged for any agreement to \$5,000.*

(e) Require that a holder of an agreement to alter a streambed remain responsible for implementing any mitigation or other measures necessary to protect fish and wildlife resources after the agreement has expired.

(f) *Authorize the department to extend the agreement for up to 5 years, and would establish the procedures for that extension.*

(g) Authorize the department to suspend or revoke an agreement if the agreement holder is not in compliance with the terms of the agreement.

To the extent this bill would provide for additional criminal prosecutions for violations of the bill, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department to pay all necessary expenses incurred in carrying out the Fish and Game Code. Unless otherwise provided, all money collected under the code is deposited in the fund.

By imposing new duties on the department, and potentially increasing revenues deposited in the fund, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Chapter 6 (commencing with Section 1600) of
- 2 Division 2 of the Fish and Game Code is repealed.
- 3 SEC. 2. Chapter 6 (commencing with Section 1600) of
- 4 Division 2 is added to the Fish and Game Code, to read:
- 5

CHAPTER 6. FISH AND WILDLIFE PROTECTION AND  
CONSERVATION

1600. The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state. This chapter is enacted to provide conservation for these resources.

1601. The following definitions apply to this chapter:

(a) "Agreement" means a lake or streambed alteration agreement.

(b) "Day" means ~~business~~ calendar day.

(c) "Emergency" has the same definition as in Section 21060.3 of the Public Resources Code.

(d) "Entity" means any person, state or local governmental agency, or public utility that is subject to this chapter.

1602. (a) It is unlawful for any entity to substantially divert or obstruct the natural flow of, or substantially change or use any material from, the bed, channel, or bank of any river, stream, or lake designated by the department *in which there is at any time an existing fish or wildlife resource or from which an existing fish or wildlife resource derives benefit*, or to deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river ~~or stream~~, *stream, or lake designated by the department*, unless all of the following occur:

(1) The department receives written notification regarding the activity, in the manner prescribed by the department.

(2) The department determines the notification is complete *in accordance with Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, irrespective of whether the activity constitutes a development project for the purposes of that chapter.*

(3) The entity pays the applicable fees, pursuant to Section 1609.

(4) One of the following occurs:

1 (A) The department determines that the activity will not  
2 substantially adversely affect an existing fish or wildlife resource.

3 (B) The department *determines that the activity may*  
4 *substantially adversely affect an existing fish or wildlife resource*  
5 *and* issues a final agreement to the entity that includes *reasonable*  
6 measures necessary to protect any fish and wildlife resources that  
7 the activity might substantially adversely affect, and the entity  
8 conducts the activity in accordance with the agreement.

9 (C) A panel of arbitrators issues a final agreement to the entity  
10 in accordance with subdivision (b) of Section 1603, and the entity  
11 conducts the activity in accordance with the agreement.

12 (D) The department does not issue a draft agreement to the  
13 entity within 60 days from the date the department ~~deems the~~  
14 ~~notification to be complete~~ *receives a complete notification*, and  
15 the entity conducts the activity in accordance with the notification,  
16 including ~~taking measures that are necessary~~ *any measures that*  
17 *are intended* to protect fish and wildlife resources.

18 ~~(b) Except as otherwise provided in this subdivision, the term~~  
19 ~~of an agreement shall not exceed five years. However, the entity~~  
20 ~~shall remain responsible for implementing any mitigation or other~~  
21 ~~measures necessary to protect fish and wildlife resources after the~~  
22 ~~agreement expires. Any agreement executed pursuant to this~~  
23 ~~chapter shall specify the term of the agreement. The department~~  
24 ~~shall extend an agreement for a one-year period at the expiration~~  
25 ~~of its term if the entity requests the department to extend the~~  
26 ~~agreement, in writing, at least 30 days prior to the expiration date~~  
27 ~~of the agreement, and pays the applicable fee. The department~~  
28 ~~shall extend the agreement without modification unless the~~  
29 ~~department determines the agreement is required to be modified~~  
30 ~~to protect fish and wildlife resources. If the entity submits a request~~  
31 ~~to renew the agreement, the agreement shall remain in effect until~~  
32 ~~the department notifies the entity of its decision to grant or deny~~  
33 ~~the request. If there is a disagreement between the department and~~  
34 ~~the entity as to whether the agreement needs to be modified to~~  
35 ~~protect fish and wildlife resources, the department and the entity~~  
36 ~~shall attempt to resolve any disagreement in accordance with~~  
37 ~~Section 1603.~~

38 ~~(e)~~

39 *(b) (1)* If an activity involves the routine maintenance and  
40 operation of water supply, drainage, flood control, or waste

1 treatment and disposal facilities, notice to and agreement with the  
2 department shall not be required after the initial notification and  
3 agreement, unless the department determines any one of the  
4 following:

5 ~~(1)–~~

6 (A) The work described in the agreement has substantially  
7 changed.

8 ~~(2)–~~

9 (B) Conditions affecting fish and wildlife resources have  
10 substantially changed, and those resources are adversely affected  
11 by the activity conducted under the agreement.

12 ~~(3)–~~

13 (C) The agreement otherwise needs to be modified to protect  
14 fish and wildlife resources.

15 ~~The department shall be provided with a copy of the agreement~~  
16 ~~in order to make this determination. This subdivision applies to~~  
17 ~~any instance where~~

18 (2) *This subdivision applies only if notice to, and agreement*  
19 *with, the department was attained prior to January 1, 1977, and the*  
20 *department has been provided a copy of the agreement.*

21 ~~(d)–~~

22 (c) State and local governmental agencies, public utilities, and  
23 their employees, agents, or contractors acting within the scope of  
24 their employment, agency or contract, shall not be subject to  
25 criminal liability for violating this ~~section~~ *chapter*, but may be  
26 liable under Section ~~1604~~ *1615*.

27 ~~(e) The department shall not condition the issuance of an~~  
28 ~~agreement on the receipt of another local, state, or federal permit.~~

29 ~~(f) Any time period prescribed in this chapter may be extended~~  
30 ~~by mutual agreement.~~

31 1603. (a) After the department determines that the  
32 notification is complete ~~and that an agreement is required~~, *the*  
33 *department shall determine whether the activity may substantially*  
34 *adversely affect an existing fish and wildlife resource. If the*  
35 *department determines that the activity may have that effect, the*  
36 *department shall provide a draft agreement to the entity within 60*  
37 *days of making that determination. The draft agreement shall*  
38 *describe the fish and wildlife resources that the department has*  
39 *determined the activity may substantially adversely affect and*  
40 *include measures to protect those resources. The department's*

1 *description of the affected resources shall be specific and detailed,*  
2 *and the department shall make available, upon request, the*  
3 *information upon which its determination of substantial adverse*  
4 *effect is based.* Within 30 days of the date of receipt of the draft  
5 agreement, the entity shall notify the department whether the  
6 measures to protect fish and wildlife resources in that draft  
7 agreement are acceptable. If the department's measures are not  
8 acceptable, the entity shall so notify the department in writing and  
9 specify the measures that are not acceptable. Upon written request,  
10 the department shall meet with the entity within 14 days of the date  
11 the department receives ~~that notice~~ *the request* for the purpose of  
12 resolving any disagreement regarding those measures. If the entity  
13 fails to respond in writing within 90 days of receiving the draft  
14 agreement, the department may withdraw that agreement, and  
15 require the ~~affected~~ entity to resubmit a notification to the  
16 department before commencing the activity.

17 (b) If mutual agreement is not reached at any meeting held  
18 pursuant to subdivision (a), the entity may request, in writing, the  
19 appointment of a panel of arbitrators to resolve the disagreement.  
20 A panel of arbitrators shall be appointed within 14 days of receipt  
21 of the written request. The panel of arbitrators shall be comprised  
22 of three persons, as follows: one representative selected by the  
23 department; one representative selected by the affected entity; and  
24 a third person mutually agreed upon by the department and the  
25 entity, who shall serve as the panel chair. If the department and the  
26 entity cannot agree on the third person within that 14-day period,  
27 the third person shall be appointed in the manner provided by  
28 Section 1281.6 of the Code of Civil Procedure. The third person  
29 shall have scientific expertise relevant to the fish and wildlife  
30 ~~resources that have been identified as being potentially adversely~~  
31 *resources that may be substantially adversely* affected by the  
32 activity proposed by the entity. The authority of the panel of  
33 arbitrators is limited to resolving disagreements regarding the  
34 measures specified in subparagraph ~~(B) of paragraph (3) of~~  
35 ~~subdivision (a) of Section 1602. Any measures approved by the~~  
36 ~~panel shall protect fish and wildlife resources. Any decision by the~~  
37 *(a), and subdivision (b) of Section 1615, and, in the case of an*  
38 *extension, whether or not the agreement needs to be modified to*  
39 *protect fish and wildlife resources. Any decision by the panel of*  
40 arbitrators shall be binding on the department and the affected

entity, shall be based on the best scientific information reasonably available at the time of the arbitration, and, *except for a decision to extend an agreement without modification*, shall be made in the form of a final agreement. The final agreement issued by the panel shall also include, without modification, all measures that were not subject to arbitration. Each party shall pay the expenses of their selected representative and pay one-half the expenses of the third person.

~~1604. (a) Any entity that violates this chapter is subject to a civil penalty of not more than twenty-five thousand dollars (\$25,000) for each violation.~~

~~(b) The civil penalty imposed pursuant to subdivision (a) is separate from, and in addition to, any other civil penalty imposed pursuant to this section or any other provision of law.~~

~~(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into consideration the nature, circumstance, extent, and gravity of the violation. In making this determination, the court may consider the degree of toxicity and volume of the discharge, whether the effects of the violation may be reversed or mitigated, the entity's ability to pay, the effect of the penalty on the ability of the entity to continue in business, any voluntary cleanup efforts undertaken by the entity, any prior history of violations by the entity, the gravity of the entity's behavior, the economic benefit to the entity, if any, resulting from the violation, and any other matters the court determines justice may require.~~

~~(d) A civil action brought under this section shall be brought by the Attorney General upon complaint by the department, or by the district attorney or city attorney in the name of the people of the State of California. Any actions relating to the same violation may be joined or consolidated.~~

~~(e) If the relief sought in an action brought pursuant to this section is a temporary restraining order, preliminary injunction, or permanent injunction, it is not necessary to allege or prove at any stage of the proceeding any of the following:~~

~~(1) That irreparable damage will occur if the temporary restraining order, preliminary injunction, or permanent injunction is not issued.~~

~~(2) The remedy at law is inadequate. The court shall issue a temporary restraining order, preliminary injunction, or permanent~~



1 ~~injunction in a civil action brought pursuant to this chapter without~~  
2 ~~the allegations and without the proof specified in this paragraph or~~  
3 ~~paragraph (1).~~

4 ~~(f) Civil penalties collected pursuant to this section shall not be~~  
5 ~~considered fines or forfeitures as defined in Section 13003, and~~  
6 ~~shall be apportioned in the following manner:~~

7 ~~(1) Fifty percent to the county treasurer of the county in which~~  
8 ~~the action is prosecuted. Amounts paid to the county treasurer shall~~  
9 ~~be deposited in the county fish and wildlife propagation fund~~  
10 ~~established pursuant to Section 13100.~~

11 ~~(2) Fifty percent to the department for deposit in the Fish and~~  
12 ~~Game Preservation Fund. These funds may be expended to cover~~  
13 ~~the costs of any legal action or for any other law enforcement~~  
14 ~~purpose consistent with Section 9 of Article XVI of the California~~  
15 ~~Constitution.~~

16 ~~1605.—~~

17 *1604. Any party affected by a decision made by an arbitration*  
18 *panel pursuant to this chapter may petition a court of competent*  
19 *jurisdiction for confirmation, correction, or vacation of the*  
20 *decision in accordance with Chapter 4 (commencing with Section*  
21 *1285) of Title 9 of Part 3 of the Code of Civil Procedure.*

22 *1605. (a) (1) Except as otherwise provided in this section,*  
23 *the term of an agreement shall not exceed five years.*

24 *(2) Notwithstanding paragraph (1), the entity shall remain*  
25 *responsible for implementing any mitigation or other measures to*  
26 *protect fish and wildlife resources after the agreement expires.*

27 *(b) Any entity may request one extension of a*  
28 *previously-approved agreement, if the entity requests the extension*  
29 *prior to the expiration of the original term of the agreement. The*  
30 *department shall grant the extension unless it determines that the*  
31 *agreement requires modification because the measures contained*  
32 *in the agreement no longer protect the fish and wildlife resources*  
33 *that the activity may substantially adversely affect. In the event the*  
34 *department makes that determination, the department shall*  
35 *propose measures intended to protect those resources.*

36 *(c) If the entity disagrees with the department's determination*  
37 *that the agreement requires modification to protect fish and*  
38 *wildlife resources or with the measures proposed by the*  
39 *department, the disagreement shall be resolved pursuant to the*  
40 *procedures described in subdivision (b) of Section 1603.*



1 (d) The department may not extend an agreement for more than  
2 five years.

3 (e) (1) An original agreement shall remain in effect until the  
4 department grants the extension request, or new measures are  
5 imposed to protect fish and wildlife resources by agreement or  
6 through the arbitration process.

7 (2) Notwithstanding paragraph (1), an original agreement may  
8 not remain in effect for more than one year after its expiration date.

9 (f) If the entity fails to submit a request to extend an agreement  
10 prior to its expiration, the entity shall submit a new notification  
11 before commencing or continuing the activity covered by the  
12 agreement.

13 (g) \_\_\_\_.

14 1606. The department shall not condition the issuance of an  
15 agreement on the receipt of another local, state, or federal permit.

16 1607. Any time period prescribed in this chapter may be  
17 extended by mutual agreement.

18 1608. The department shall provide any entity that submits a  
19 notification pursuant to Section 1602 with all of the following  
20 information:

21 (a) The time period for review of the notification.

22 (b) An explanation of the entity's right to object to any  
23 measures proposed by the department.

24 (c) The time period within which objections may be made in  
25 writing to the department.

26 (d) The time period within which the department is required to  
27 respond, in writing, to the entity's objections.

28 (e) An explanation of the right of the entity to arbitrate any  
29 measures in a draft agreement.

30 (f) The procedures and statutory timelines for arbitration,  
31 including, but not limited to, information about the payment  
32 requirements for arbitrator fees.

33 (g) The current schedule of fees to obtain an agreement.

34 ~~1606. Any party affected by a decision made by an arbitration~~  
35 ~~panel pursuant to this chapter may petition a court of competent~~  
36 ~~jurisdiction for confirmation, correction, or vacation of the~~  
37 ~~decision in accordance with Chapter 4 (commencing with Section~~  
38 ~~1285) of Title 9 of Part 3 of the Code of Civil Procedure.~~

39 ~~1607.—~~

1 1609. (a) *The director may establish a graduated schedule of*  
2 *fees to be charged to any entity subject to this chapter. The fees*  
3 *charged shall be established in an amount necessary to pay the*  
4 *total costs incurred by the department in administering and*  
5 *enforcing this chapter, including, but not limited to, preparing and*  
6 *submitting agreements and conducting inspections. The*  
7 *department may adjust the fees pursuant to Section 713. Fees*  
8 *received pursuant to this section shall be deposited in the Fish and*  
9 *Game Preservation Fund.*

10 (b) (1) *The fee schedule established pursuant to subdivision*  
11 *(a) may not impose a fee that exceeds five thousand dollars*  
12 *(\$5,000) for any agreement.*

13 (2) *The fee amount limitation described in paragraph (1) does*  
14 *not apply to any agreement issued pursuant to subdivision (g) of*  
15 *Section 1605.*

16 1610. (a) Except as provided in subdivision (b), this chapter  
17 does not apply to any of the following:

18 (1) Immediate emergency work necessary to protect life or  
19 property.

20 (2) Immediate emergency repairs to public service facilities  
21 necessary to maintain service as a result of a disaster in an area in  
22 which a state of emergency has been proclaimed by the Governor  
23 pursuant to Chapter 7 (commencing with Section 8550) of  
24 Division 1 of Title 2 of the Government Code.

25 (3) Emergency projects undertaken, carried out, or approved  
26 by a state or local governmental agency to maintain, repair, or  
27 restore an existing highway, as defined in Section 360 of the  
28 Vehicle Code. This paragraph does not include a highway  
29 designated as an official state scenic highway pursuant to Section  
30 262 of the Streets and Highways Code, within the existing  
31 right-of-way of the highway, that has been damaged as a result of  
32 fire, flood, storm, earthquake, land subsidence, gradual earth  
33 movement, or landslide, in the year prior to the application. Work  
34 needed in the vicinity above and below a highway may be  
35 conducted outside of the existing right-of-way if it is needed to  
36 stop ongoing or recurring mudslides, landslides, or erosion that  
37 pose an immediate threat to the highway, or to restore those  
38 roadways damaged by mudslides, landslides, or erosion to their  
39 predamage condition and functionality. This paragraph does not  
40 exempt from this section any project undertaken, carried out, or

approved by a state or local governmental agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(b) The entity performing the emergency work described in subdivision (a) shall notify the department of the work, in writing, within 14 days of beginning the work. ~~Any work described in the emergency notification that does not meet the criteria for the emergency work described in subdivision (a) is a violation of this chapter if the entity did not first notify the department in accordance with Section 1602.~~

~~1608 1611.~~ (a) An entity that submits a timber harvesting plan in accordance with Section 4581 of the Public Resources Code *or directly to the department* is deemed to have given the notification required by Section 1602, as long as the following information is included in the plan:

(1) The volume, type, and equipment to be used in removing or displacing any one or combination of soil, sand, gravel, or boulders.

(2) The volume of water, intended use, and equipment to be used in any water diversion or impoundment, if applicable.

(3) The equipment to be used in road or bridge construction.

(4) The type and density of vegetation to be affected and an estimate of the area involved.

(5) A diagram or sketch of the location of the operation that clearly indicates the stream or other water and access from a named public road. Locked gates shall be indicated and the compass direction shall be shown.

(6) A description of the period of time in which operations will be carried out.

(b) Notwithstanding subdivision (a), the department is not required to process the notification until the timber harvesting plan and the proper notification fee are submitted to the department.

~~1609.~~ ~~The director may establish a schedule of fees to be charged to any entity subject to this chapter. The fees charged shall be established in an amount necessary to pay the total costs incurred by the department in administering and enforcing this chapter, including, but not limited to, preparing and submitting agreements and conducting inspections. The department may adjust the fees pursuant to Section 713. Fees received pursuant to~~

~~this section shall be deposited in the Fish and Game Preservation Fund.~~

~~1610.—~~ *have both been received by the department.*

*(c) Any agreement issued pursuant to this section shall be effective on the earliest date specified in paragraph (6) of subdivision (a) of Section 1611 unless a later effective date is specified in the agreement.*

*1612. The department may suspend or revoke an agreement at any time if it determines that an entity is not in compliance with the terms of the agreement. The department shall adopt regulations establishing the procedure for suspension or revocation of an agreement.*

~~1611.— This chapter does not require the department to issue an~~

~~1613. This chapter does not require the department to process a notification or issue the agreement if it has notified an entity, in writing, that the activity in which it is engaged violates any other provision of state or federal law. Upon receipt of that notification by the entity, the timelines provided in Section 1602 do not apply, until the violation has been remedied.~~

~~1612.— If an entity is required to comply with this chapter covered by the agreement would violate any provision of the Fish and Game Code or the regulations adopted to implement that code. If the department provides that notice to the entity, the department shall have one year to refer the violation to the Office of the Attorney General, district attorney, or city attorney for prosecution if the violation is not remedied. If the department fails to refer the violation within one year from the date it notifies the entity of the violation, the department shall process the notification in accordance with the procedures established in Section 1603 unless the entity withdraws the notification. Nothing in this chapter limits the department's authority to refer, or otherwise prosecute the violation at any time after the expiration of that one-year period.~~

*1614. If the entity is required to perform work subject to this chapter pursuant to a court or administrative order following some form of enforcement action or notice, the entity shall include the measures proposed by the department to protect fish and wildlife resources in the agreement. Those measures are not subject to arbitration.*

1     1615. (a) Any entity that violates any provision of this  
2 chapter is subject to a civil penalty of not more than twenty-five  
3 thousand dollars (\$25,000) for each violation.

4     (b) The civil penalty imposed pursuant to subdivision (a) is  
5 separate from, and in addition to, any other civil penalty imposed  
6 pursuant to this section or any other provision of the law.

7     SEC. 3. No reimbursement is required by this act pursuant to  
8 Section 6 of Article XIII B of the California Constitution because  
9 the only costs that may be incurred by a local agency or school  
10 district will be incurred because this act creates a new crime or  
11 infraction, eliminates a crime or infraction, or changes the penalty  
12 for a crime or infraction, within the meaning of Section 17556 of  
13 the Government Code, or changes the definition of a crime within  
14 the meaning of Section 6 of Article XIII B of the California  
15 Constitution.

